

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 869 of 2018 (S.B.)

Ramesh S/o Ramdas Mendole,
Aged about 49 years, Clerk,
R/o Plot No.55, Yogendra Nagar,
near Neharu Colony, Nagpur -13.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary, Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) The District Collector,
Civil Lines, Nagpur.

Respondents.

Shri Bharat Kulkarni, S. Pande , Advocates for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 27/06/2023.

JUDGMENT

Heard Shri Bharat Kulkarni, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The case of the applicant in short is as under -

The applicant is working under the respondent no.2, i.e., Collector Office, Nagpur as a Clerk. The applicant was appointed as a Clerk on 08/09/1993. He has completed 12 years of service on

08/09/2005. The Collector, Nagpur has granted the benefit of 1st time bound promotion from 06/12/2012, as per the order dated 23/11/2016, instead of 08/09/2005. The applicant has challenged the said order in this O.A.

3. It is the contention of applicant that after completion of 12 years service from the date of initial appointment, he is entitled for 1st time bound promotion, i.e., w.e.f., 08/09/2005.

4. The respondents have filed the reply and submitted that the applicant was prosecuted for the offence punishable under the Anti Corruption Bureau (ACB) Act. The applicant was under suspension. The suspension was revoked. The Criminal case was pending. He was acquitted. The said acquittal was challenged before the Hon'ble High Court and after the decision of the Hon'ble High Court, the respondents have decided the time bound promotion of the applicant and granted it from 06/12/2012. At last submitted that because of pendency of the Criminal case, the applicant is not entitled to get time bound promotion from 08.09.2005, the applicant also not passed the Revenue Qualifying Examination (RQE). It is one of the conditions as per the G.R. of 1995. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for the applicant has pointed out the Judgment in O.A.No.1012/2017 of

the Maharashtra Administrative Tribunal, Principal Bench, Mumbai, dated 05/11/2020. He has also pointed out the Judgment in O.A.No.868/2018 of this Tribunal, dated 07/04/2022 by which the punishment awarded by the respondents is quashed and set aside.

6. The learned counsel for the applicant has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.1493/2009 with connected O.As., decided on 30/10/2015. From the cited decision of the M.A.T., Mumbai it is clear that passing of RQE examination is not a ground to refuse time bound promotion. In the cited Judgment, it is also held that pendency of the criminal case cannot be a ground to deny the promotion. In para-11 of the Judgment in O.A.No.1493/2009 with connected matters, the M.A.T., Mumbai has held as under -

*“(11) Baviskar’s case also was based on more or less the same principles. Although it would appear that the successor of 1995 G.R. dated 20.7.2001 whereby the Assured Career Progression Scheme (ACP) was introduced was also considered therein. The essence of the matter is the same. It was observed in Para 2 that a certain judgment of this Tribunal taking the view that was ultimately taken in **Baviskar’s** case was in fact affirmed by the Hon’ble High Court in Writ Petition No.4808/2006. From Para 4, it would appear that there also the Applicant did not clear the examination within the time limit and the number of attempts. It was held that in so far as Time Bound Promotion was concerned, the seniority had no role to play and relying upon another judgment of this Tribunal and a judgment of the Hon’ble Supreme Court in **K.C. Sharma and others Vs. Union of India***

and others (1997) 6 SCC 721, the OA was allowed and the Applicants were held eligible to be considered for the benefit of Time Bound Promotion (ACP) from the date of completion of 12 years of service provided they had passed the departmental examination on that date and were otherwise eligible.”

7. In para-13, the M.A.T., Mumbai has held in respect of RQE examination as under –

“13. It is, therefore, very clear that the principle is that for Time Bound Promotion, the period is to be counted from the date of initial appointment and even if the concerned employee did not clear the examinations within the time and attempts, etc. that might give rise to any other consequence with regard to his service conditions, but as far as Time Bound Promotion is concerned, that would be no circumstance against him.”

8. The M.A.T., Mumbai in para-11 has recorded its findings that pendency of the criminal case cannot be a ground to deny the time bound promotion. The Judgment of Hon’ble High Court in Writ Petition No. 4808/2006 was quoted by the M.A.T., Mumbai. The Judgment of Hon’ble Supreme Court in the case of **K.C. Sharma and others Vs. Union of India and others (1997) 6 SCC 721** was also quoted. In para-11, it is specifically held that the passing of RQE examination cannot be a ground to deny the time bound promotion.

9. The applicant was not at fault for pendency of the criminal case. He was acquitted by the Special Court. The said Judgment was challenged before the Hon’ble High Court. The Hon’ble High Court dismissed the said appeal preferred by the State. As per the

Judgment of M.A.T., Mumbai, it is clear that pendency of the criminal case cannot be a ground to deny the time bound promotion. Passing of RQE examination is also not a ground to deny the time bound promotion. The respondents have denied the claim of the applicant on the ground of pendency of the criminal case and also on the ground of not passing the RQE examination. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to give time bound promotion to the applicant after completion of 12 years of service from the date of his initial posting.
- (iii) No order as to costs.

Dated :- 27/06/2023.

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(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/06/2023.